IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 229 OF 2004

Trimbak Ganesh Lele. ... Appellant.
Versus.
Chintaman Sadashiv Lele
(since deceased through his LRs)
Smt.Sharadabai Chintaman Lele & ors. ... Respondents.

Shri A.V.Anturkar with Shri S.P.Pawar for the Appellant.

Shri S.G.Karandikar for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 10th February, 2005.

P.C.:

1. Heard the learned Counsel for the parties. The Appeal is by the original Defendants. The Appellate Court has allowed the Appeal preferred by the Respondents-Plaintiffs and has held that the suit properties were agreed to be partitioned as per the partition terms dated 29th May 1964 (Exhs.108 and 124). The Appellate Court directed that the suit properties be partitioned by metes and bounds as per the partition terms dated 29th May 1964.

2. Shri Anturkar, the learned Counsel appearing for the Appellants submitted that there is a clear finding recorded by both the Courts that the partition was effected on 29th May 1964. He has invited my attention to the findings recorded in the earlier suit i.e.

Regular Civil Suit No.1890 of 1974 and findings recorded by the Appellate Court in the Appeal arising out of the Decree passed in the said earlier suit. He submitted that the partition was effected by metes and bounds in the year 1964 and therefore, the Appellate Court could not have passed a decree for partition once again. Secondly he submitted that as the partition had taken place in the year 1964, the suit is barred by limitation which is filed in the year 1991. He submitted that the Appellants have perfected their title by adverse possession.

3. Shri Karandikar, the learned Counsel appearing for the Respondents has invited my attention to the prayers made in the plaint filed by the Respondents. He submitted that the suit is essentially for declaration of title that the properties which are allotted to the share of the Respondents in the partition of the year 1964 were of their ownership and the prayer is for possession of the suit property which was allotted to the share of the Respondents in the partition effected in the year 1964. He submitted that in fact the Appellate Court has passed a decree on title.

4. It is not in dispute that the suit properties described in paragraph Nos.2A and 2B of the plaint filed by the Respondents were allotted to their share in the partition effected in the year 1964. On consideration

of the findings recorded by the trial Court in the earlier suit and the earlier appeal, a finding has been recorded by the Appellate Court that the properties were agreed to be partitioned in the year 1964 and the actual partition by metes and bounds was not effected in the year 1964 and therefore, the Appellate Court has proceeded to pass a decree in favour of the Respondents. As the Appellants are not disputing that the Respondents/Plaintiffs were allotted properties described in paragraphs No.2A and 2B of the plaint in the partition of 1964, there cannot be any quarrel about the declaration granted by the Appellate Court in clause (i) of the operative part of the decree unless the Appellants establish their case of adverse possession.

5. So far as the plea of adverse possession of the Appellant is concerned, the Appellate court has dealt with the said plea. I find that in the written statement filed by the Appellant, it is not stated from which date the Appellants started asserting hostile title to the knowledge of the Respondents. After considering the pleadings and evidence on record, the Appellate Court has discarded the plea of adverse possession set up by the Appellants. After perusing the pleadings and the Judgments of the Courts below, I find no fault with the findings recorded by the Appellate Court so far as the plea of adverse possession is concerned. It is to be borne in mind that though the

Appellant succeeded in the trial Court, the plea of adverse possession was not accepted by the trial Court. There is no reason to interfere with the concurrent findings of fact recorded by the Courts below against the Appellant on the issue of adverse possession.

6. Therefore, the position which emerges is that the Respondents are entitled to possession of the suit properties allotted to their share in 1964. After the Respondents established their title and after the Appellants failed to substantiate the plea of adverse possession, the Respondents are held entitled to the possession of the properties which were allotted to them in the partition of 1964.

7. There is no substantial question of law arising in the Second Appeal. The Second Appeal is dismissed with no order as to costs.

Judge.